

FEDERAL ELECTION COMMISSION
999 E Street, NW
Washington, DC 20463

FIRST GENERAL COUNSEL'S REPORT

RR 12L-03

DATE RECEIVED: January 17, 2012

DATE ACTIVATED: March 16, 2012

EARLIEST SOL: October 15, 2015

LATEST SOL: June 28, 2016

SOURCE:

Internally Generated

RESPONDENT:

Freedom and Prosperity PAC f/k/a John Dennis
for Congress and Kelly Lawler, in her
official capacity as treasurer

RELEVANT STATUTES:

2 U.S.C. § 434(b)
11 C.F.R. § 104.3

INTERNAL REPORTS CHECKED:

Disclosure Reports

FEDERAL AGENCIES CHECKED:

None

I. INTRODUCTION

The Reports Analysis Division ("RAD") referred Freedom and Prosperity PAC f/k/a John Dennis for Congress and Kelly Lawler, in her official capacity as treasurer ("the Committee"), to the Office of the General Counsel ("OGC") for failing to disclose a total of \$68,628.54 in receipts and \$116,002.94 in disbursements in its original 2010 October Quarterly Report, 2010 12 Day Pre-General Report, and 2010 30 Day Post-General Report. In response to the RAD Referral, the Committee acknowledges the reporting errors

We recommend that the Commission open a MUR in connection with RR 12L-03 and find reason to believe that the Committee violated 2 U.S.C. § 434(b) by failing to disclose accurately receipts and disbursements in reports to the Commission. Additionally, we

RECEIVED
FEDERAL ELECTION
COMMISSION
2012 MAY 14 PM 3:11
CELA

1304431368

recommend that the Commission enter into pre-probable cause conciliation with the Committee

II. FACTUAL AND LEGAL ANALYSIS

A. Factual Background

Freedom and Prosperity PAC is a nonconnected committee registered with the Commission. During the 2009-2010 election cycle, the committee was registered as John Dennis for Congress and was the principal campaign committee of John Dennis, a candidate for California's 8th Congressional District seat. After Mr. Dennis lost the 2010 general election, the committee was converted to nonconnected committee status and renamed. Freedom and Prosperity PAC filed its Statement of Organization on February 3, 2011. Kelly Lawler is Freedom and Prosperity PAC's treasurer and was the treasurer of John Dennis for Congress.

On June 28, 2011, the Committee filed an amendment to each of the previously-filed 2010 October Quarterly Report, the 2010 12 Day Pre-General Report, and the 2010 30 Day Post-General Report, all of which disclosed additional activity not included in the original reports, as reflected in the chart below.

Report	Date of Amendment	Amount of Increased Receipts	Amount of Increased Disbursements	Total Increased Activity
2010 Oct. Quarterly	July 28, 2011	\$35,313.00	\$7,241.04	\$42,554.04
2010 Pre-General	July 28, 2011	\$16,844.00	\$106,048.61	\$122,892.61
2010 Post-General	July 28, 2011	\$16,471.54	\$2,713.29	\$19,184.83
	TOTAL	\$68,628.54	\$116,002.94	\$184,631.48

1 On October 13, 2011, RAD sent the Committee a Request for Additional Information
2 (RFAI) seeking clarification of the increased activity on the three reports.¹ Letter from Brian
3 Jones, Campaign Finance Analyst, Federal Election Commission, to Kelly Lawler, Treasurer,
4 Freedom and Prosperity PAC (Oct. 13, 2011) (on file at www.fec.gov). The RFAI noted that
5 each of the amended reports disclosed a substantial increase in the amount of receipts and
6 disbursements relative to those disclosed in the original reports, and requested that the
7 Committee either amend the reports or provide an explanation for the discrepancies. *Id.*

8 Kelly Lawler responded to the RFAI on behalf of the Committee by filing a
9 Miscellaneous Text Submission (Form 99) explaining that the increased activity resulted from
10 technical difficulties in processing information from a vendor. *See* Form 99 filed November 19,
11 2011. Specifically, she explained as follows:

12 In response to your letter dated October 13th, we had additional
13 receipts and disbursement [sic] because of problems and
14 challenges with downloads from our fundraising vendor. In
15 response to this we have initiated a new system of processing
16 information from that vendor for our data and how we manage the
17 data internally. This was an oversight and the processes which
18 caused this to occur have been revised.

19
20 The RAD Analyst also followed up with a telephone call on November 21, 2011. During
21 the conversation, he informed Ms. Lawler that the Committee may be referred for further action
22 by the Commission and that she could provide any additional information regarding the
23 increased activity. Thereinafter, the Committee filed a supplemental response stating the
24 following:

25 To clarify further, the omitted entries were initially discovered by
26 the committee while reconciling imports from our fundraising
27 vendor. We have evaluated our internal procedures to prevent this

¹ RAD sent the Committee an RFAI on April 29, 2011 regarding the 2010 30 Day Post-General Report that did not concern the increased activity at issue. The Committee did not respond to that RFAI.

13044331370

1 in the future. The Committee voluntarily has taken steps to correct
2 the public record by filing amended reports, reviewed its own
3 internal recordkeeping and reporting processes. Additionally, the
4 Committee conducted a full review of its imports of data.
5

6 See Form 99 filed November 29, 2011.

7 RAD referred the Committee to the Office of the General Counsel for failing to disclose a
8 total of \$68,628.54 in receipts and \$116,002.94 in disbursements in its original 2010 October
9 Quarterly Report, 2010 12 Day Pre-General Report, and 2010 30 Day Post-General Report. See
10 Memorandum from Patricia Carmona, Chief Compliance Officer, Federal Election Commission,
11 to Anthony Herman, General Counsel, Federal Election Commission (Jan. 17, 2012) (hereinafter
12 "Referral").
13
14
15
16
17

18 On January 25, 2012, this Office notified the Committee of the Referral in accordance
19 with the Commission's policy regarding notification in non-complaint generated matters. See 74
20 Fed. Reg. 38617 (August 4, 2009). Upon notification of the RAD Referral, Ms. Lawler provided
21 an explanation that was similar to her responses to the RFAL. See Letter from Kelly Lawler,
22 Treasurer, Freedom and Prosperity PAC (March 11, 2012) (hereinafter "Response"). In the
23 Response, Ms. Lawler said that the Committee has changed its data importing procedures from a
24 quarterly basis to a monthly basis, upgraded the technology it uses to collect financial
25 information, and changed its monthly reconciliation procedures. *Id.* at 1. She also requested a
26 quick resolution : *Id.* at 2.

13044331371

B. Legal Analysis

The Federal Election Campaign Act of 1971, as amended ("the Act"), requires committee treasurers to file reports of receipts and disbursements in accordance with the provisions of 2 U.S.C. § 434. *See* 2 U.S.C. § 434(a)(1) and 11 C.F.R. § 104.1(a). These reports must include, *inter alia*, the total amount of receipts and disbursements. *See* 2 U.S.C. § 434(b); 11 C.F.R. § 104.3. Committees are also required to disclose itemized breakdowns of receipts and disbursements and disclose the name and address of each person who has made any contribution or received any disbursement in an aggregate amount or value in excess of \$200 within the calendar year, together with the date and amount of any such contribution or disbursement. *See* 2 U.S.C. § 434(b)(2) - (6); 11 C.F.R. § 104.3(a)(2) and (4); 11 C.F.R. § 104.3(b)(1) and (3).

The Committee did not comply with the Act's reporting requirements when it failed to disclose \$68,628.54 in receipts and \$116,002.94 in disbursements on three of its original reports filed with the Commission.² Specifically, the Committee failed to disclose \$35,313 in receipts and \$7,241.04 in disbursements on its original 2010 October Quarterly Report, \$16,844 in receipts and \$106,048.61 in disbursements on its original 2010 12 Day Pre-General Report, and \$16,471.54 in receipts and \$2,713.29 in disbursements on its original 2010 30 Day Post-General Report. Therefore, we recommend the Commission find reason to believe that the Committee violated 2 U.S.C. § 434(b).

² The Committee filed its amendments under its new name – Freedom and Prosperity PAC – even though the original reports had been filed under the Committee's prior name – John Dennis for Congress. As a committee that had converted from an authorized candidate committee to a nonconnected political committee, Freedom and Prosperity PAC has an ongoing responsibility to ensure that reports filed by John Dennis for Congress complied with the Act and Commission regulations. *Cf.* Advisory Opinion 2012-06 (RickPerry.org) (requiring nonconnected committee that converted from an authorized committee to resolve general election contributions within 60-day regulatory period).

13044331372

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

13044331373

13044331374

1

2

3

4

5

IV. RECOMMENDATIONS

6

1. Open a MUR in RR 12L-03.

7

8

2. Find reason to believe that Freedom and Prosperity PAC f/k/a John Dennis for Congress and Kelly Lawler, in her official capacity as treasurer, violated 2 U.S.C. § 434(b).

10

11

12

3. Approve the attached Factual & Legal Analysis.

13

14

4. Enter into conciliation with Freedom and Prosperity PAC f/k/a John Dennis for Congress and Kelly Lawler, in her official capacity as treasurer, prior to a finding of probable cause to believe.

15

16

17

- 5.

18

19

20

³ Pursuant to 11 C.F.R. § 111.43(d)(1), election sensitive reports include October Quarterly Reports due on October 15th before the general election and Pre-General Reports.

⁴ Under the Administrative Fines formula, election sensitive reports are considered "not filed" if they are not filed four days prior to the relevant election; non-election sensitive reports are considered "not filed" if they are not filed within thirty days of their due date. 11 C.F.R. § 111.43(e).

6. Approve the appropriate letter.


Anthony Herman
General Counsel


Daniel A. Petalas
Associate General Counsel

5-14-12
Date

BY:


Kathleen Guith
Deputy Associate General Counsel


Mark Shonkwiler
Assistant General Counsel


Kamau Philbert
Attorney

13044331375